

### **REMARKS/ARGUMENTS**

This response is submitted in reply to the Office Action dated May 13, 2010. Claims 1-15 currently stand rejected. As explained below, however, Applicants respectfully submit that the claimed invention is directed to statutory subject matter. Nonetheless, Applicants have amended various ones of the claims to further clarify the claimed invention. No new matter has been added by the amendment. In view of the amendments to the claims and the remarks presented herein, Applicants respectfully request reconsideration and allowance of all of the pending claims of the present application.

#### **Claims 1-10, 14, and 15 are Directed to Statutory Subject Matter.**

Claims 1-10, 14, and 15 currently stand rejected under 35 U.S.C. § 101 for allegedly being directed to non-statutory subject matter. In particular, the Office Action indicates that claims 1-10, 14, and 15 are directed to a process that does not satisfy the machine-or-transformation test as recited by the Federal Circuit in *In re Bilski*, (Fed. Cir. 2008).

However, subsequent to the date of the present Office Action, the Supreme Court has published its decision in *Bilski v. Kappos* (U.S. Supreme Court 2010). In the decision, the Supreme Court indicated that the machine-or-transformation test is one, but not the sole, test for determining whether the subject matter of a claim constitutes statutory subject matter. The Court did state, however, that the machine-or-transformation test provides an “important clue” as to whether the subject matter of a process claim is statutory.

Applicants assert that claim 1 of the present application, and its dependent claims, constitute statutory subject matter because, as amended, claim 1 indicates that the operations recited in the claim are performed by a computer. As such, the content of claim 1 cannot be construed as possibly being a description of an abstract idea that may be mentally performed. Rather, the claim is tied to a machine that not only stratifies the machine prong of the machine-or-transformation test, but otherwise constitutes statutory subject matter in view of the decision in *Bilski* because the claim does not recite an abstract idea.

The Office Action also submits a second rejection under 35 U.S.C. § 101 to claims 1-15 for allegedly “not falling into one of the four statutory categories.” The Office Action subsequently appears to rely on the “useful, concrete, and tangible result” test from *State Street*,

149 F.3d at 1373-74. However, similar to the description of the machine-or-transformation test above, the “useful, concrete, and tangible result” test is not a dispositive with respect to determining whether claim language constitutes patentable subject matter. As such, claims 1 and 11 are directed to statutory subject matter, merely because the claims are directed to a process or method that is not an abstract idea.

Nonetheless, the claims, including independent claims 1 and 11, do in fact have a useful, concrete, and tangible result. With respect to being useful, the subject matter of the claims, for example, may be used for synchronizing digital images (acquired by a camera having a first clock) with a second (acquired by a microphone having a second clock), and more generally the subject matter of the claims may be used for determining and/or establishing temporal relationships between data from devices having separate clocks. With respect to being concrete and tangible, each of the claims 1 and 11, describe the determination of a time (or temporal) interval, which clearly constitutes a concrete and specific concept and not an abstract or vague notion. As such, Applicants assert that the subject matter of claims 1 and 11 is statutory, and, even though the test for determining whether the claims are statutory is not the useful, concrete, and tangible result test, the claims nonetheless meet the requirements of the test.

In view of the arguments submitted above, claims 1 and 11, and therefore claims 1-15, constitute statutory subject matter, given the current state of the law. Therefore, Applicants respectfully submit that the current rejections be withdrawn.

### **CONCLUSION**

In view of the amendments and remarks presented above, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants’ undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required

Appl. No.: 10/598,442  
Amdt. dated 09/10/2010  
Reply to Office action of 05/13/2010

therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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**ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON SEPTEMBER 10, 2010.**